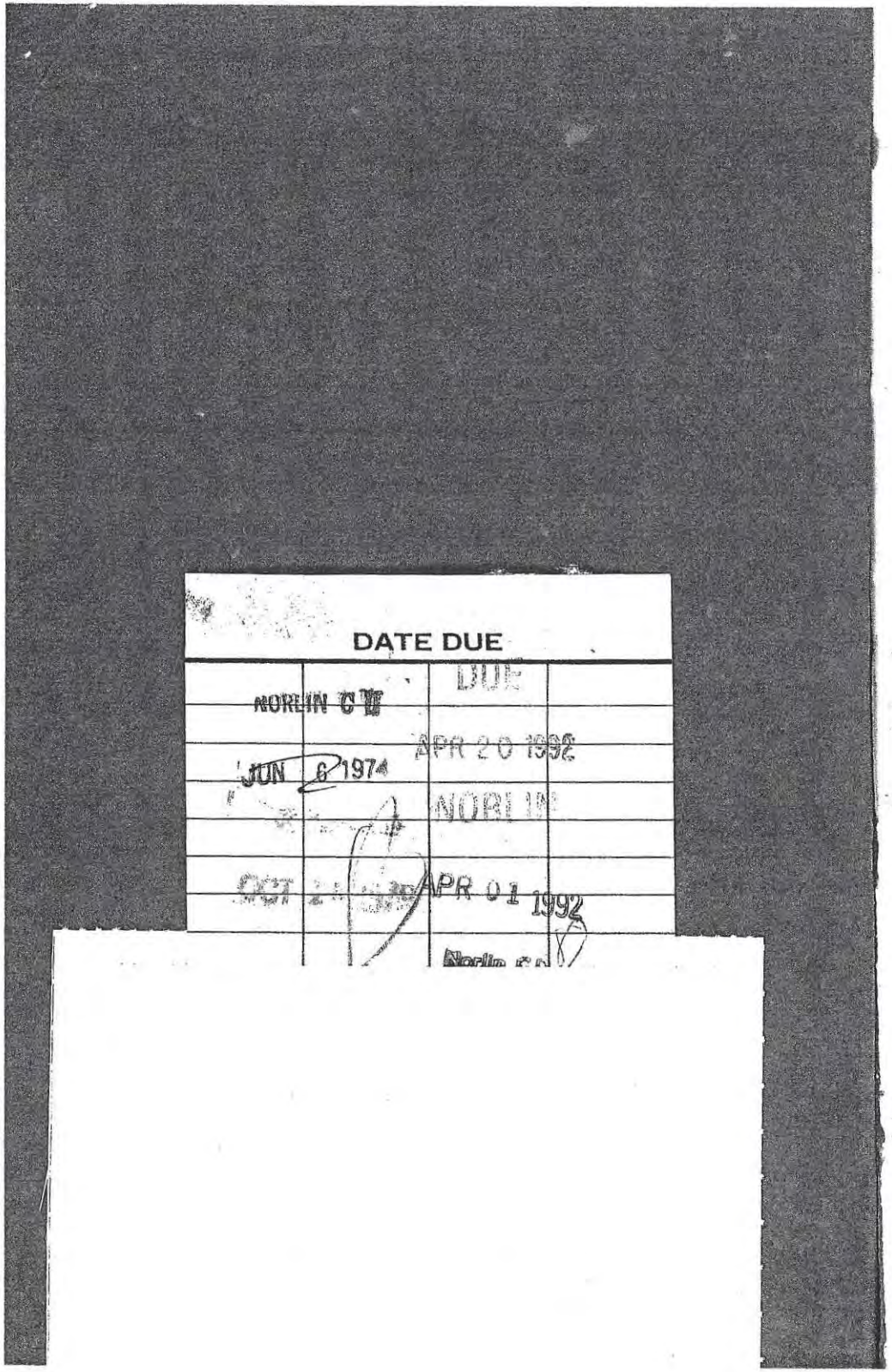

CIVIL RIGHTS ACT OF 1967

HEARINGS

BEFORE THE

SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS

OF THE

COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

ON

S. 1026, S. 1318, S. 1359, S. 1362, S. 1462, H.R. 2516 and H.R. 10805

PROPOSED CIVIL RIGHTS ACT OF 1967

AUGUST 1, 8, 9, AND 14; SEPTEMBER 19, 20, 21, 26, AND 27, 1967

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carrying out the President's will. And I don't want a man like that to be passing upon my rights; I don't care what they are.

This is one of these administrative procedures. President Roosevelt had a commission to deal with these things. I think this quote typifies an administrative proceeding: "Furthermore, the same men are obliged to serve both as prosecutors and as judges. This not only undermines judicial fairness, it weakens public confidence in that fairness. The Commission decisions affecting private rights and conduct lie under the suspicion of being rationalizations of the preliminary findings which the Commission in the role of prosecutor has presented to itself."

Now, don't you think there is all too much truth in that?

Mr. WELLS. There is a great deal of truth in anything Mr. Roosevelt said, because if there was ever an able and wonderful political leader it was Mr. Roosevelt. I certainly remember him in the greatest ways. And I think since the days of Mr. Roosevelt we have gone a long way toward accomplishing much of the civil rights and much of the human rights that we want to achieve. But we haven't gone near far enough. And I think if Mr. Roosevelt were alive today he would be the first to recognize that times have to change along to fit the particular needs in which we are. I think this is the beauty of the Constitution under which we operate.

Senator ERVIN. I think that you and I agree that there is no method for finding the facts which has ever been devised by the mind of man which is superior to the finding of facts by juries?

Mr. WELLS. That is correct.

Senator ERVIN. And yet you advocate a bill which absolutely decrees that people must have their rights adjudicated without a jury, and must be determined by the prosecutor, rather than either by a jury or impartial judge.

Well, thank you, Mr. Wells. I will state, without hesitation, that you have been a very helpful witness. It's always exhiliarating to discuss constitutional principles with a man who believes in the old adage of "practice what you preach." We may disagree, but I respect your views and I know that you are sincere. And I might state that you embody all the attributes of what I consider to be a true southern gentlemen.

Mr. WELLS. Thank you. I really appreciate the opportunity of being here, Senator. It has been a real pleasure. And I thank you very much.

Mr. AUTRY. Mr. Chairman, we will supply for the record a copy of the law recently enacted by the Georgia Legislature this past year on jury selection. I understand that jurors are no longer selected from the tax rolls.

(The document referred to follows:)

SELECTION OF GRAND AND TRAVERSE JURORS

[Code § 59–106 Amended]

NO. 122 (HOUSE BILL NO. 307)

AN ACT To amend section 59–106 of the Code of Georgia of 1933, as amended, relating to the revision of jury lists and the method whereby jury commissioners choose grand and traverse jurors, so as to change the method of choosing grand and traverse jurors; to repeal conflicting laws; and for other purposes

Be it enacted by the General Assembly of Georgia:

SECTION 1. Section 59–106 of the Code of Georgia of 1933, relating to the revision of jury lists and the method whereby jury commissioners choose grand and traverse jurors, is hereby amended by striking same in its entirety and inserting in lieu thereof a new section 59–106 to read as follows:

"59–106. Immediately upon the passage of this Act and thereafter at least biennially, or, if the judge of the superior court shall direct, at least annually, on the first Monday in August, or within sixty (60) days thereafter, the board of jury commissioners shall compile and maintain and revise a jury list of upright and intelligent citizens of the county to serve as jurors. In composing such list they shall select a fairly representative cross-section of the upright and intelligent citizens of the county from the official registered voters' list which was used in the last preceding general election. If at any time it appears to the jury commissioners that the jury list, so composed, is not a fairly representative cross-section of the upright and intelligent citizens of the county, they shall supplement such list by going out into the county and personally acquainting themselves with other citizens of the county, including upright and intelligent citizens of any significantly identifiable group in the county which may not be fairly represented thereon.

After selecting the citizens to serve as jurors, the jury commissioners shall select from the jury list a sufficient number, not exceeding two-fifths of the whole number, to serve as grand jurors. The entire number first selected, including those afterwards selected as grand jurors, shall constitute the body of traverse jurors for the county, to be drawn for service as provided by law, except when a name which has already been drawn for the same term as a grand juror shall also be drawn as a traverse juror, such name shall be returned to the box and another drawn in its stead."

SEC. 2. All laws and parts of laws in conflict with this Act are hereby repealed.

Approved March 30, 1967.

The next witness is Mr. W. B. Hicks, Jr., executive secretary, the Liberty Lobby.

Mr. Hicks is accompanied by Prof. Garrett, past president of the American Psychological Association.

STATEMENT OF W. B. HICKS, JR., EXECUTIVE SECRETARY, THE LIBERTY LOBBY, ACCOMPANIED BY HENRY E. GARRETT, PROFESSOR OF PSYCHOLOGY, COLUMBIA UNIVERSITY, AND MICHAEL JAFFE

Mr. HICKS. Mr. Chairman and members of the committee, I am W. B. Hicks, Jr., executive secretary of Liberty Lobby. I am here to present the views of our Board of Policy, on behalf of the 170,000 subscribers to our monthly legislative report, Liberty Letter.

I am accompanied today by our general counsel, Michael Jaffe, and Dr. Henry E. Garrett, the eminent author and professor emeritus of psychology at Columbia University.

Our testimony will be brief. We have appeared before this committee to testify on the same legislation in 1966, as which time we went into great detail, and presented you with an extensive analysis of title IV, the so-called "Open Housing" provisions of the legislation, prepared for us by Dr. Alfred Avins of Memphis State University School of Law.

We shall take this opportunity to restate our objections to each of the "Civil Rights" proposals contained in the 1967 act, (S. 1026):

1. Title I: This title of the bill purports to forbit any discrimination in Federal court jury selection, but actually requires prospective jurors to give information of race, sex, and religion for entry on records that could be used to accomplish any kind of discrimination desired by the Federal jury officials. Certainly, this is a law that is more likely to be used for jury "packing" than to avoid discrimination.

We urge this committee to recommend against that part of title I which provides for the recording of such information.

2. Title II: This is a law which admits of just about any interpretation that one chooses to give to the phrase "undue discretion to determine" juror qualifications. Obviously, it can be used for political reasons to prevent the establishment of so-called "Blue Ribbon" juries in cases where political interests and politicians are involved. Liberty Lobby points out that such cases happen to be one of the most common instances of the use of "Blue Ribbon" juries. Furthermore, it is highly unlikely that such a law will accomplish much "racial balance" in juries sitting on racial cases, since juror challenges "for cause" are not touched by the law. Again, as in most "Civil Rights" laws, much is promised and expected, but little is changed except, as in this case, another precious right of local government is lost.

3. Title III: Liberty Lobby feels that the courts of the Nation are already open to any legitimate complainant under existing law, and that the powers granted the Attorney General under this title are not needed.

4. Title IV: There are only two conceivable bases in law for forced housing laws. They are either (1) regulation of a public utility; or (2) an exercise of the police power.

The true hallmark of a public utility is that everyone is entitled to the service without arbitrary discrimination. This duty to serve any applicant on equal terms constitutes the main difference between public utilities and all other businesses. Racial discrimination in the selection of housing occupants and buyers may be arbitrary discrimination, but to forbid it by law is to convert private dwellings and the housing industry into public utilities.

The U.S. Supreme Court has repeatedly held that "the State could not, by mere legislative fiat * * * convert (private business) into a public utility * * * for that would be taking private property for public use without just compensation, which no State can do consistently with the due process of law clause of the 14th amendment." Since antidiscrimination legislation in housing attempts to impose the obligations of public utilities on private businesses, it is unconstitutional.

Senator ERVIN. Are you an attorney?

Mr. HICKS. No, sir; I am not.

Senator ERVIN. As I construe the decisions of the Supreme Court, prior to latter days, it has held in several cases that any law which made the rights of a property owner dependent upon the will of private individuals, deprives him of his property without due process of law in violation of the Constitution. Is that not true?

Mr. JAFFE. Yes, sir; that is very, very true.

Senator ERVIN. That principal of law was announced where municipalities passed zoning ordinances which provided, among other things, that one's use of a particular piece of property could be varied from the general rule by the consent of a certain portion of the adjoining landowners.

Now doesn't the open-occupancy provision of this law amount to saying, to every owner of residential property in the United States, that he cannot sell or rent his residential property to the person to whom he wishes if some other private individual objects and demands that he sell it to him?

Mr. JAFFE. Yes, sir; this is very correct. It would do that. And it would seem to be taking away the use of his property without due process, as you put it.

Mr. HICKS. I would answer to that that we can quote from a decision of the U.S. circuit court referred to in our testimony last year before this committee. I do not have the reference here exactly, but the exact quote is as follows: "Absent conspiracy or a monopolization, a seller engaged in private business may normally refuse to deal with a buyer for any reason, or for no reason whatever."

Senator ERVIN. As a matter of fact, isn't that perfectly consistent with a multitude of holdings of the Supreme Court that under the provisions of the due process clause no man may be deprived of a liberty without due process of law; every man has a right to trade or refuse to trade with anybody on any ground whatsoever?

Mr. JAFFE. Yes, sir; that is very true.

Mr. HICKS. Yes, sir. The fourth circuit court did refer to Supreme Court decisions.

Senator ERVIN. If a business receives a monopoly from the Government, it assumes an obligation to the Government that it will render service to everybody by reason of the fact that it receives this special grant in the nature of a monopoly?

Mr. HICKS. Yes, sir.

Senator ERVIN. Now, the Government doesn't give the owner of the private residential property any special privilege, does it?

Mr. HICKS. He certainly has no monopoly.

As an exercise of the police power, forced housing is equally inapplicable and equally unconstitutional. Traditional exercises of the police power fall into two major categories. The first consists of regulating property so that its use does not injure the health or safety of others, or destroy their use of their own property.

The concept that no person can use his property in such a way as to diminish the health, safety, or use of property of others is basic to any orderly society. Antidiscrimination legislation has no relevance to such enactments since it is not the use but the failure to convey the property which is restricted. No attempt has ever been made to support such legislation on this ground; any such attempt would be frivolous

The other class of cases involves State legislation which was passed to correct deleterious social or economic conditions arising from a distortion in the normal free competitive market, resulting in an inequality in bargaining power, and hence the inability of individuals to obtain the benefits of a free competitive market.

The earliest examples of such laws were public utility regulations. Since utilities are by nature monopolies, they represent a permanent distortion of a competitive market norm, and hence justify permanent economic regulationn.

Finally, where a temporary economic condition, such as war or depression, distorts the normal economic market, the police power permits the State to correct dislocations produced by this condition through temporary legislation which goes no further than the minimum needed to correct the condition, and lasts no longer than the temporary emergency.

Applying these principles to proposed forced housing laws, one would expect to find the following limitations to make the statute valid:

(1) The citizen who sought to use the law in fact needed housing.

(2) At the time and place the law was in effect, a shortage of housing did in fact exist, and that this shortage did in fact distort a normal competitive market.

(3) Government could find no way consistent with the Constitution other than regulation to alleviate the shortage and restore market conditions.

(4) The regulation was reasonably calculated to restore normal market conditions.

The proposed law, (1) does not restrict its applicability to those who demonstrably need housing; (2) nor does it apply only where a shortage is distorting the normal market; (3) nor does it seek to develop any of the numerous alternatives to regulation as a means of solving such shortages; and (4) its impact would clearly distort the market further, rather than restore it; and on a permanent basis, rather than a temporary one.

Obviously, title IV of the 1967 act fails to qualify as a proper exercise of the police power, and therefore, is clearly unconstitutional.

5. Title V: Mr. Chairman, Liberty Lobby believes that title V of this act is a prime example of all that is bad in civil rights legislation. With the passage of this title of the act, the vast majority of Americans are going to believe that at last there will be an end to the sensational violence that results from civil rights activities in the South. This title is being presented by its proponents as a law to protect civil rights workers—no more and no less.

Mr. Chairman, this is no mere law to protect civil rights workers. It is much more, It is much less.

First, it is much less, because it is so dependent on a determination of the exact motive that led to the criminal act. In the case of the murdered Mrs. Liuzzo, for example, if the defense could establish that the murderers did not know who the victim was, it could argue that none of the motives specified in this title could apply to the crime—that Mrs. Liuzzo was murdered simply because she was a white woman in intimate association with a black man. As we read this title, such a motive is not covered by the act, and a conviction under this law could not take place.

Even with the passage of this title, there will continue to be acts of violence committed in which a conviction is utterly impossible because of the necessity of proving motive beyond a shadow of a doubt. This, in turn, is going to lead to increased feelings of pure frustration and disappointment with a law that promised so much, and yet can deliver no more than human beings are capable of delivering. You cannot legislate into being an ability to read the human heart and mind. Yet, that is necessary if you are to fulfill the promise of this proposed title.

And this title is much more than a law to protect civil rights workers. This is an act to create an entire new criminal code for enforcement by the Attorney General as he sees fit. Far more than civil rights is involved in title V.

Senator ERVIN. I am greatly impressed by your statement concerning the difficulty of determining the motives of people. I would like to

ask you if this bill and all those so-called civil rights bills of moder vintage are not in effect an effort to compel conformity of thought o the part of the American people? It attempts to control their thought and make them think in accordance with the will of the Government

Mr. HICKS. This is the only conclusion that you can draw fror looking at the bills the way they are written.

Senator ERVIN. Is there anything wrong with a man of one race o of one religion or of one national origin renting his house to a man o the same race or the same religion or the same national origin?

Mr. HICKS. No, sir.

Senator ERVIN. It is a perfectly proper act. In fact, it is in th American tradition.

Mr. HICKS. It is his property.

Senator ERVIN. This bill attempts to make that act, which in and of itself is entirely innocent, wrong merely because of some kind of intent in a man's mind, isn't that true?

Mr. HICKS. Yes, sir.

Senator ERVIN. The Bible says—and these may not be the exact words—"God judgeth not as man judges; man lookest upon the external appearance, but God looketh upon the heart," This application depends solely upon what is in a man's mind or heart, doesn't it?

Mr. HICKS. Yes, sir.

For example, the Supreme Court of California has declared, in the case of *Mulkey* v. *Reitman*, that so-called fair housing is a constitutional right. What good will it do this Congress to decide that title IV of this act should not pass, when it is quite probable, since the U.S. Supreme Court upheld the California court, that under section 501(a) (5) of title V, forced housing can be enforced by the Attorney General as though title IV had passed, but with even harsher penalties?

And what are the union members of the Nation going to think of title V when it is applied to enforce the right of anyone, whether or not a member of the union, to the privileges of union membership? The possibility for abuse of title V is real and sure.

Senator ERVIN. Doesn't title IV undertake, in the final analysis, to give the Secretary of Housing and Urban Development the power to compel a real estate firm, which has invested its money and its talent in building up a business, to admit anyone into the real estate firm?

Mr. HICKS. I was going to say that I believe that title IV just gives all this power to the Secretary.

Senator ERVIN. Now title V undertakes to transfer from the States to the Federal Government the power to create and enforce alleged crimes of violence.

Mr. HICKS. Yes, sir; although the crime of violence is not necessary for title V to come into effect. As we read it, the threat of violence or the assumed threat of violence is sufficient, which may be entirely imaginary.

Senator ERVIN. Yes, that principle is dangerous, isn't it, because, unlike crimes in general, there is no corpus delicti that accompanies any intent.

Mr. HICKS. No, sir; not that we have been able to discover.

Senator ERVIN. A threat can be nothing but a mere wish in words which vanishes with the spoken word.

Mr. HICKS. It might not even be spoken. A victim might even assume that a threat is present when it is not.

Senator ERVIN. You can't convict a man of a crime unless there is something other than subject we thought. You must show some corpus delicti. That is my understanding of the law.

Mr. HICKS. Yes, sir.

Finally, Mr. Chairman, we will concern ourselves with an entirely different aspect of civil rights laws in general—an aspect that is little noted in the public debate of the issue, but which we believe deserves much more attention and study than it is getting.

We have asked Dr. Garrett to appear with us today because of certain developments that have taken place in the 14 months since Liberty Lobby last appeared before this subcommittee in opposition to the Civil Rights Act of 1966.

At that time, if you will recall, we voiced certain warnings about the impact of civil rights laws on the psychology of all Americans, black and white, and urged that these psychological effects be taken into account in your deliberations. I will go back to the first three paragraphs of our testimony before this subcommittee on Wednesday, June 22, 1966:

> Liberty Lobby is opposed to so-called "Civil Rights" laws; at least we do not believe that such legislation is good—primarily because this type of legislation is doing more harm to peaceful relations between the races than all the prejudices and bigotries of the people. These laws are having the cumulative effect of establishing massive and dangerous illusions in the minds of the American people, black and white alike.
>
> With the passage of each new "Civil Rights" law, white Americans feel less and less responsible for the welfare of their less fortunate colored neighbors; and more and more convinced that the special protections contained in these laws constitute, in fact, special privileges for one class of Americans. Black Americans, on the other hand, seem to suffer from the illusion that somehow, the mere passage of a new law is going to create a whole new world of comfort, affluence and satisfaction of the desire not to be too obviously different from other people.
>
> It is here that the danger lies in this kind of legislation, because, when it becomes apparent to all that this kind of law cannot produce the results that the Negro desires, the black American is going to be the most frustrated of all human beings, and the white American, who has passed one law after another in an effort to satisfy those desires, is going to be completely unsympathetic with the Negro at the time when sympathy will be most needed.

So here we are, 14 months later, busily reaping the whirlwind that we believe has sprung, fullblown, from the seeds of earlier civil rights acts. Our Nation is bleeding; not just in sorrow, either, but in anger, mistrust—and even in hate.

We have given our explanation of this phenomenon. We would hope that it would arouse in you some small question as to its validity, or lack of it. But, we at Liberty Lobby are not recognized authorities in the field of psychology. This is why we have asked Dr. Garrett to appear with us today. He is such a recognized authority, and his knowledge and expertise and decades of experience are being made available to you today for the purpose of expanding upon—and explaining—the impact of civil rights laws on the American psychology.

Dr. Garrett is the author of many of the finest works on psychology ever used in our universities, such as:

"Psychological Testing Methods and Results" (1933).
"The Age Factor in Mental Organization" (1935).

"Statistics in Psychology and Education" (six editions, from 1926 through 1966).
"Great Experiments in Psychology" (four editions, 1930 through 1951).
"Psychology" (1950).
"General Psychology" (1955 and 1961).
"Testing for Teachers" (1959 through 1965).
"Elementary Statistics" (1962).
"The Art of Good Teaching" (1964).

He has indicated to us that he agrees that there is an adverse psychological impact on the thinking of the American people caused by the passage of civil rights laws in the past. Now he is available to you, members of the committee, to offer his knowledge in this area. We are pleased to present you with this opportunity to establish—or demolish—the validity of our charge that the passage of civil rights acts may be largely responsible for the present condition of race relations in America.

Thank you.

Senator ERVIN. I have one or two questions for Mr. Jaffe.

Under title V of this bill, is it not necessary for the prosecution in the Federal court to establish beyond a reasonable doubt two things: first, that the forbidden act was committed or the forbidden threat was made, and second, that the forbidden act was committed or the forbidden threat was made because of the race or the religion or the national origin of the victim, or purported victim?

Mr. JAFFE. Yes, sir; that is the way I would read it.

Senator ERVIN. Therefore the Federal Government, instead of permitting cases of homicide to be tried in the State court, where it is only necessary to prove, beyond a reasonable doubt, the commission of a homicide, must prove beyond a reasonable doubt that homicide was committed on the basis of one's race, religion, political affiliation, color, or national origin, in addition to the fact that he was engaged in some specified Federal right.

Mr. JAFFE. Yes, sir; that certainly is the way I would read it.

Mr. HICKS. I would like to point out, sir, that as we read this title, not only the race or religious aspect is called for, but a further item of motive must also be proved. In other words, in the Federal courts you could not be convicted for a crime such as, for example, a black man kills a white man simply because he doesn't like white men; that would not stand to a conviction under this law. He has to kill him on account of what that white man is trying to do in the way of exercising one of the rights enumerated here.

Senator ERVIN. In other words, instead of making law enforcement easier, this magnifies the difficulty of law enforcement, doesn't it?

Mr. HICKS. I think if justice is to prevail—that is, if the law is to be followed—that makes it impossible.

Senator ERVIN. Under the language, and under all of the interpretations of the 14th amendment down to this date, and leaving out the dicta in the *Guest* case, Congress is without power to pass acts under the 14th amendment except acts which prevent the States from violating the 14th amendment; namely, denying a person due process of the law and the equal protection of the law. Congres is unable, under the

words and decisions, to pass laws making crimes out of violent conduct of individuals; is that not true?

Mr. JAFFE. Yes; that would be true.

Senator ERVIN. Of course, in the *Guest* case, the majority of the court committed an unprecedented sin. They said, "If we shall hereafter try a case which may never arise, under an act of Congress, which may never be passed, an individual can be guilty of violent conduct if the act of Congress so provides under the provisions of the 14th amendment." Isn't that substantially the effect of it?

Mr. JAFFE. That is my understanding of it.

Senator ERVIN. Don't you think it is rather exceptional for judges to say to Congress that if it will hereafter pass a law, which has not been before the court we will hold that law to be constitutional without hearing any argument, or without knowing what the record shows. Isn't that substantially what the majority of the justices, speaking by way of dicta, did in the *Guest* case?

Mr. JAFFE. Yes, that is my understanding, sir.

Senator ERVIN. Doesn't that adopt this canon of construction: The constitution is not a harmonious instrument composed of provisions of equal dignity, but, on the contrary, is a self-destructive instrument consisting of mutually repugnant provisions of unequal dignity, and that Congress, under the power conferred upon it by section V of the 14th amendment, can not only negative the first section of the 14th amendment, but can supersede the legislative powers of the States and adopt laws in areas covered by the constitutions of the States which the provisions of the constitution itself forbid Congress to pass?

Mr. JAFFE. That is what the courts appear to be doing.

Senator ERVIN. Doctor Garrett, the committee will be pleased to hear anything that you may desire to say.

STATEMENT OF DR. HENRY E. GARRETT, PAST PRESIDENT, AMERICAN PSYCHOLOGICAL ASSOCIATION, WASHINGTON, D.C.

Dr. GARRETT. Mr. Chairman, perhaps I should retire on the crest of the wave, now that all this has been said. But I would like to make one brief statement. And if you would like to question me on the basis of that, I will be delighted.

I can say all that I know in a very short space. In the first place, I think that the present exacerbation of trouble between black and white has come largely out of a misunderstanding of the civil rights issues and the civil rights laws by both the black and the white. Now, the white man has been made over the last 30 or 40 years, particularly 30 years, to feel very guilty. He has been told that he has mistreated the Negro, in spite of the fact that the Negro has made more progress in this country than he has anywhere on the face of the earth, that he is responsible for slavery, and all that. And for a long time the white man who was most often lambasted was the southerner. Now, the northern white people are beginning to take the same point of view, the pendulum has swung quite a bit, and so they are now being lambasted. The only people who seem not to have been converted at all—and I don't think they have read anything for the last 6 or 8 months—is the President's Commission on Civil Rights which made these recommendations the other day here.

Now, white people, then, are full of the idea that they are guilty for something that they have never done. So much for that.

Now, the black people—in whom I am very much interested, and to whom I consider myself a friend—the black people are immature relative to the white. They are more primitive, they are more childlike, their abstract intelligence is on the average considerably lower. All of the evidence, not just a piece of it, but all of it shows that.

The evidence can be drawn from four sources. In the first place, we have the anthropological and the fossil evidence to show that the black race broke away from the tree of evolution about 200,000 years later than the white race did, which means, as I said, that they are not inferior, they are immature.

In the second place, the Negro's brain on the average is somewhat smaller, somewhat lighter, and somewhat less fissured than the white. And some of the more recent developments in the front lobes are smaller, not so thick in the Negro as they are in the white.

I think these differences alone could account for much of the difficulty that we find in the behavior of the two races.

On the psychological side, with which I think I ought to be fairly familiar after 40 years of work in the field, the average intelligence quotient of the white child in the United States is arbitrarily set at 100. That is the way the test was made. The Negro child in the Southeastern States has an average intelligence quotient of 80. They overlap—that is, the number of Negroes who do as well, as the average white child, ranges from 10 to 15 percent, which means that if you put these children into classrooms indiscriminately as they are being forced in by Federal judges, they will be, first of all, confused, and then, to use the famous word, "frustrated," and finally they will be disappointed and drop out or quit.

Now, the teachers are afraid to fail them because of reprisals. So what they do generally is to promote them, passing the burden over to the next grade, and the child pushes on up the way he does in New York City, by seniority, until finally he graduates, because he is old enough to, though he might not be able to read. I have known a number of youngsters in New York City who have graduated, or they were ready to graduate, and they couldn't read to save their lives. One of them was the son of a friend of mine. He was a masseur of a track team. And so I got him a special tutor, and we brought him up to where he could read his fifth-grade level. I think it was a great accomplishment. His intelligence quotient was 83.

Now, in the Army tests over 50 years—I have just made an analysis of them—the proportion of Negroes who do as well as the average white man has varied from 14 percent in 1917 to 12 percent in 1966. That is, in spite of all the money that has been poured into education of white and black, the comparative standing is the same as it was 50 years ago.

Now, that to me seems to mean that there must be a basis for it other than just experience or teaching or bad schools or something of the sort.

The third source of evidence is history. We do know something about the history of black Africa over the last 5,000 years. And we find that in black Africa south of the Sahara desert there was never a literate civilization. There was no system of measurement. The black African

did not discover the principles of a plow, he just used the stick, nor of a wheel. The wheel was discovered in the third century B.C. by the Samarians in Asia Minor. But the black African didn't get it. He never built a terrace or a bridge any more than a stick across a stream. His architectural achievements were a mud hut in a stockade.

Now, all of this means to say that the Negro is necessarily an inferior creature; he isn't. If you take intelligence on the abstract level, that is, the kind of thing which people in school and in the professions and in business have to use, numbers, and words and diagrams and figures, that is where he falls down. And his history shows it. He doesn't have it.

Now, Dr. Cornelly, a well-known British investigator in Kenya, advanced the theory of what he called the lazy frontal lobe. He said that the black African has a lazy frontal lobe, which accounts for the fact that he doesn't think. He had the satisfaction of seeing his book taken off the market; you can't buy it any longer now.

That is one way you can always quiet criticism, you know, is to step on people, either take their books off the market, or fire them. As I have told people, fortunately I am over age where you can be fired, I am out. And I don't give a hoot what anybody says, I am impressed by the evidence, not by people, and not by howling, whining, and yelling.

Well, the history, then, of the black African gives us every reason to think that he falls significantly below the white man in his intelligence.

One has to look only around him to see that in the last 12 or 14 years we have plenty of evidence of what I have just said. The New York City schools have now become what one author called a custodial institution for children who have no future.

The Washington schools, even the Washington Post, which is—well, not a conservative paper—says that the Washington schools were sick. Well, they are not only sick, they are moribund. And you people know that as well as or better than I do.

The riots and the rest of it that breaks out is not brought about by any special strange disease. Here you have got a childish, primitive sort of people, whose thinking is shallow, they start burning, somebody yells to them, "burn, baby, burn," and they began to burn. And everybody loots that can get something. And the cops don't shoot at them, the cops have been ordered not to shoot at them, so the looters take it on out. It is never recovered.

Now, the record of the Negro in crime in this country is literally scandalous. In 1963 the FBI report, which is the last one I have looked at, showed that the Negro, who constitutes about 10 or 11 percent of our population, committed 10 times as many murders as the white, six times as many robberies, seven times as many rapes, and had 10 times as many illegitimate children.

Civil rights laws, then, do what? They make the Negro think that he is going to be suddenly equal and able to do anything he wants.

I heard the story the other day of the Negro boy who walked into a bank and talked to one of the tellers. And the teller said, "What do you want?" thinking he probably wanted to be a porter. And he said, "Well, I want your job."

Now, it didn't occur to him that he had to be trained to get that man's job.

Negro mothers in Washington have told me that they were bitterly disappointed when their children, who had always ranked in the upper 25 percent of the class, were put into the white schools and they began to drop down to the middle and even lower than the middle. If the Civil Service Commission and HEW continue to push and force desegregation of schools in the South, you have only one result, a destruction, ultimately, of the school system; there isn't another thing that you can look forward to than that, a demoralization, a disorganization, the fading out of all the good teachers who can get into the private schools, with the final end in chaos.

Now, we are living in an insane age. But this is insanity raised to the *n*th power. And sometimes I can't believe that it is possible that things have gone the way they have.

That is all I have to say, sir.

Senator ERVIN. Don't you have the impression that those who have advocated and demanded the passage of civil rights bills have in effect assured the minority race that they can be lifted merely by the force of law, and without substantial exertion on their part, to social and economic heavens?

Dr. GARRETT. Even if they haven't told them in so many words, Senator, they have certainly given them—that is what they think; they think they suddenly—I know one Negro mother in Charlottesville told me, "I want to put my child in the white schools so he will be as smart as they are."

They think by osmosis or something they will absorb and be as bright as the white man.

It is a cruel thing; the whole business has been stupid and cruel.

Senator ERVIN. Do you agree with me that no men of any race can be lifted to social economic heavens except by their own exertions and their own sacrifices?

Dr. GARRETT. I certainly do.

Senator ERVIN. Now, there is an expression in the Bible to this effect. It says, "Hope deferred maketh the heart sick." Does not that Biblical statement contain a profound psychological truth?

Dr. GARRETT. Absolutely. That is one of the real reasons for all the rioting, disappointment, and limited ability to comprehend what is going on, which, of course, always makes it worse.

Senator ERVIN. Don't you agree with me that the growing promises which politicians have made to the minority race, in advocating the passage of civil rights bills, have brought about a sense of frustration among many people? I admire a man who achieves, regardless of his race; but I disfavor those who plant false hopes in the minds of those who cannot achieve greatness overnight.

Dr. GARRETT. That is true.

Mr. HICKS. Mr. Chairman, could I comment right at this point that the colored race is not the only sufferer from the illusion here that is created by the passage of civil rights laws. It is our contention that the passage of civil rights laws has also had a profound effect on the psychology of the white American. It has caused him to believe he has done his duty to his fellow man, simply by the passage of a law which can in the end have little result toward accomplishing the true duty of the white man toward the colored man in America. And it has taken him off the hook, so to speak, and left him in a position so that when the colored man rises up in wrath out of the unfulfilled aspirations that

he has, the white man looks at him with abasement and says, "What are you hollering about? We passed a Civil Rights Act, you should be happy," and completely ignores the true duties that he has to the colored man.

Senator ERVIN. That statement conforms to what I have said on the Senate floor on a number of occasions. Any man who maintains that men of any race can be lifted to a more abundant life by the passage of laws is either fooling himself or fooling somebody else. Doesn't the psychology which demands the passage of laws of this nature have a tendency to blind not only the supposed beneficiaries of the act, but the proponents of the act to an acceptance of something which is absolutely incompatible with life? No man can advance to a more abundant life except by exertion on his part; is that not true?

Mr. HICKS. Yes, sir. To that extent Liberty Lobby feels that we would be far better off to be concentrating on the true problems, and we feel that this concentration on the passage of civil rights laws is a detriment to that aim.

Senator ERVIN. I will call your attention to something I said at the opening of the hearings on this bill. Title IV, that is the open occupancy provision, is unwise because it is irrelevant, even to the demands of its supporters. This legislation will not end the ghetto. It will not provide the jobs, the schools, the environmental changes that civil rights groups list as their goals. It does not provide one new dwelling for one inhabitant of slum housing. If enacted, this bill will only bring false hope, and engender further frustrations in those who are deluded about its effective purpose. Do you have any comments that you could make on that?

Mr. JAFFE. No; except that I certainly agree with them, and think it sums up the results or lack of results about this legislation.

Senator ERVIN. Do you agree with me—I will ask this question of all you gentlemen—that the only thing you can do by law is to give all men equality before the law itself?

Dr. GARRETT. That is all.

Senator ERVIN. And do you agree with me that, in this country, every man of every race has been given equality before the law?

Mr. HICKS. I believe, sir, that we can say, by and large, that is completely true. There are perhaps exceptions. But these exceptions are not confined to the inequalities presented to any one race, or in any one locality.

Senator ERVIN. Now, isn't one of the inherent vices in the modern civil rights proposals the fact that those proposals are inconsistent with the theory that all men shall stand equal before the law. According to this bill a certain segment of our own society would be singled out and given rights superior to those that have been granted to any other American in the history of this country.

Mr. HICKS. Yes.

Senator ERVIN. I have a comment about the open-occupancy provision of this bill. If A has to sell B his house, at B's insistence, whether A wishes to do so or not, is there any equality between A and B?

Mr. HICKS. No, sir.

Senator ERVIN. In that kind of a situation, aren't the rights of A subordinated to the rights of B, and inequality produced instead of equality?

Mr. HICKS. Yes, sir.

Senator ERVIN. Doctor Garrett, statistics that are available to me indicate that people of the poverty level are composed of the white race also. Is that substantially in accordance with your understanding?

Dr. GARRETT. That is right.

Senator ERVIN. Very few of the politicians, these very sincere people, who advocate the passage of laws of this nature, possess any great overriding concern about the welfare of people at the poverty level who happen to be white, do they?

Dr. GARRETT. Well, I suppose they are not quarreling and asking for something.

Senator ERVIN. Therefore there has been no promise made to them saying they are going to be lifted by law to a social and economic heaven. For that reason they have been given no reason for the frustration which the minority race possesses?

Dr. GARRETT. I would like to say one word about this often used phrase, "equality of opportunity," which I think is a cliche which really doesn't mean anything.

If equality of opportunity means the same opportunity, then it isn't equality. If you give a bright person and a dull person the same tasks, exactly the same tasks, it won't be equal for those two, because the bright one will do it very much faster. And what we should say, rather, is that we give each person, Negro and white, an opportunity to work at the highest level of which he is capable. Now, I am all in favor of that. I think again, too, that the urging of everybody to go to college is stupid—I ought not use that word—is ill advised, let's say, because only about 15 percent of the students of college age are capable of doing good college work. Now, it would be far better for these others to go to a vocational school or something instead of having it brought up to them that they have got to go to college and pull the standards of those colleges down in order to pass.

Senator ERVIN. I would like to know your opinion as to whether or not the task of assigning students in the public schools should be a function of the educator or the function of a Federal judge?

Dr. GARRETT. Well, we generally go on the principle that the person who is educated for a job is likely to be better at it than the man in the street. And that, I think, is pretty generally agreed upon. And I think it is really very incredible almost, to see Federal judges, as has happened in my own State, putting children into school over the heads of the principals and the superintendents and everybody else just willy-nilly.

Senator ERVIN. The schools in the District of Columbia have been desegregated ever since the decision of May 14, 1954, as far as they can be desegregated under the standards of residential areas. And at the present time somewhere in the neighborhood of 90 percent of the students in the public schools of the District of Columbia are colored. Now, there has been a practice here in the District called the track system under which the students, regardless of what their color may be, have been assigned to classrooms according to what teachers have ascertained about their respective capacities. Recently Judge J. Skelly Wright handed down a decision ordering the schools in the District to abandon the track system and assign the children to a school irrespective of their respective capacities. Do you think that kind of judicial decree is calculated to afford the best opportunity for the children to learn?

Dr. GARRETT. I don't see how it could, because the promise is that all children are alike, they all learn equally well, you put them here, you put them there, or you put them anywhere else. The track system, it seems to me, was the best thing that the Washington schools had. And when they threw it out I was appalled. But I have been appalled so often at the Washington schools that it has come to be almost a permanent state.

Senator ERVIN. I am a lawyer, have been a judge, and I have been a member of the board of trustees of various schools. I am led to the conclusion, as a result of my experience, that Federal judges are rather ill equipped to assume the role of the educator. The determination of what children should be assigned to what school is a matter that belongs to the educator. When Federal judges undertake to assume the role of educating children they have undertaken something they are not qualified to do.

Dr. GARRETT. I think that is completely true.

Senator ERVIN. Thank you, gentlemen, for your appearance. The subcommittee stands in recess subject to the call of the Chair.

(Whereupon, at 12:28 p.m., the subcommittee recessed.)

CIVIL RIGHTS ACT OF 1967

MONDAY, AUGUST 14, 1967

U.S. SENATE,
SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS
OF THE COMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to call, at 10:30 a.m., in room 2228, New Senate Office Building, Senator Sam J. Ervin, Jr. (chairman of the subcommittee) presiding.

Also present: Senators Bayh and Hart of the full committee; George B. Autry, chief counsel and staff director; Lewis W. Evans, Lawrence M. Baskir, and Rufus L. Edmisten, counsel.

Senator ERVIN. The subcommittee will come to order.

The counsel will call the first witness.

Mr. AUTRY. The first witness this morning is Mr. William Taylor representing the U.S. Commission on Civil Rights.

Senator ERVIN. You may proceed.

STATEMENT OF WILLIAM L. TAYLOR, STAFF DIRECTOR; ACCOMPANIED BY M. CARL HOLMAN, DEPUTY STAFF DIRECTOR; AND HOWARD GLICKSTEIN, GENERAL COUNSEL, U.S. COMMISSION ON CIVIL RIGHTS

Mr. TAYLOR. Mr. Chairman, I am William Taylor, Staff Director of the U.S. Commission on Civil Rights. With me this morning on my right is M. Carl Holman, who is the Deputy Staff Director of the Commission and on my left is Howard Glickstein, who is the General Counsel of the Commission. I have a statement, Mr. Chairman, from our Chairman, Dr. John Hannah, who wanted very much to be here but whose schedule did not permit him to be here, and I also have a statement of my own which is a detailed statement on the legislation.

With your permission I would like to read Dr. Hannah's statement and submit my own statement for the record.

Senator ERVIN. I have been so busy—about 25 hours a day—that I have not had time to read your statement. Since I learn things two ways, one by my eyes and the other by my ears, I prefer that you read it.

Mr. TAYLOR. I would be glad to do it if that is your wish, sir, but it is a rather lengthy statement. It runs to about 42 or 43 pages and goes into some detail on the technical aspects of the legislation. My own preference would be to submit it, but if it is your pleasure that I read it——

Senator ERVIN. I am interested in the technical aspects of the legislation also.

Mr. TAYLOR. I know that you are. In that case let me proceed first with Dr. Hannah's statement. It reads as follows: